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PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/797,884
Filing Date: March 10, 2004
Appellant(s): MANNELLA, EUGENIO

MAILED

JUL 16 2007

GROUP 3600

Matthew L. Koziarz
For Appellant

EXAMINER'S ANSWER

The previous Examiner's Answer is VACATED and replaced with this Examiner's Answer, which adds missing section (11).

This is in response to the appeal brief filed 1/23/07 appealing from the Office action mailed 1/12/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-24 are pending, rejected and on appeal.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: The rejection of claims 3,10,14,17-24 under 35 USC 112, first paragraph is withdrawn.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 3,10,14,17-24 under 35 USC 112, first paragraph is withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|---------|--------|
| 4,068,510 | NEARY | 1-1978 |
| 4,444,033 | DECKERT | 4-1984 |
| 2,348,135 | JACOBI | 5-1944 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1,4,5-7,9,10-13,15-19,21-23 are, as best understood, rejected under 35 U.S.C. 102(b) as being anticipated by Neary 4,068,510. Neary teaches a lock and spindle assembly housing comprising a barrel and plug 59 having a rear male segment

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(end of key 68 as shown in Fig. 8) with first engagement member and second engagement member (formed by the perpendicular ends of the key 68 as shown in Fig. 8), and a spindle rod 49/74 having a female end which is engaged within a recessed portion of the plug end male rear segment and having cam segments (shown in various embodiments in Figs. 5,6,9) to receive the male member key end 68 (see Fig. 8) and further comprising a cylindrical retainer 71 which engages the grooves (threads) in the plug rear segment.

2. Claims 1-3,5-7,9,11-14,16-20,22,23 are, as best understood, rejected under 35 U.S.C. 102(b) as being anticipated by Deckert 4,444,033. Deckert teaches a lock and spindle assembly housing comprising a barrel and plug 136 having a rear male segment (at 139,156,158 in Figure 18) with first engagement member (at 139) and second perpendicular engagement member 156 and a spindle rod 142 having a female end 144,146,152 (female end is hole in 152 which receives male pin member 156) which is engaged with a portion of the plug end male rear segment and having cam segments 144,146 to engage the male member and further comprising a cylindrical retainer 140 which engages the grooves (threads) in the plug rear segment.

3. Claims 8 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neary 4,068,510 or Deckert 4,444,033 in view of Jacobi 2,348,135. Jacobi teaches a frustum-conical shaped retainer (at 32 in Figure 1). It would have been obvious to modify the retainer of either Neary or Deckert to have a frustum-conical shaped retainer

as taught by Jacobi as an obvious matter of design choice to prevent tampering by providing an anti-drill sloped surface.

(10) Response to Argument

With respect to Appellant's arguments on page 5-6 of the brief regarding the rejection over Neary, it is maintained that Neary teaches a key which has a rear male segment defining first and second perpendicular portions, with portions lying in two parallel planes as shown in Figure 8 of Neary, and wherein the key is integral with the plug when fully inserted into the keyway and rotates therewith as a fixed plug element. While Appellant argues that the key is a separate element and that it is improper for the Examiner to consider the key part of the claimed plug, the Examiner disagrees. It is well known in the lock art to provide a lock plug and key with the feature of locking the key into a plug, as evidenced by the patents in class 70, subclass 389 (key removal preventing), thereby providing a fixed, integral plug device. Therefore, it would have been obvious to one of ordinary skill in the lock art to consider the fully inserted and assembled key of Neary as part of the plug such that the rear end of the key is considered the rear segment of the plug.

With respect to Appellant's arguments on page 6-7 of the brief regarding the rejection over Deckert, and specifically the passage on page 7, it is noted that Appellant is correct in asserting that the element 132 of Deckert is the lower cylinder and that the plug is 136. This was a typographical error in the final office action. In fact, it is clear from the body of the rejection that Figure 18 was being specifically discussed (as

evidenced by the cited reference numerals 139,156,158) and therefore clear that the structure referenced by numeral 136 in Figure 18 was considered the plug. It is maintained that Deckert discloses a plug 136 with the claimed lock features as described in the grounds of rejection set forth above.

With respect to Appellant's arguments on page 7-8 of the brief regarding the rejection over Neary or Deckert in view of Jacobi, the Examiner contends that it is well known in the lock art to provide a frustum-conical or sloping surface on any lock device to impede drilling out a lock plug. Thus Appellant's argument that the Examiner lacks motivation to combine either Neary or Deckert with Jacobi's frustum-conical surface is not persuasive. One of ordinary skill in the lock art would have recognized the added security enhancement of providing any lock device with such a drill-proof surface, therefore to provide the lock of either Neary or Deckert with such a drill-proof surface would have been considered and obvious matter of design choice. Furthermore, Appellant's argument on page 8 regarding the inner shape of Deckert's retainer is also not persuasive. It is maintained that the inner shape would not be changed, only the outer frustum-conical shape of Jacobi's retainer is being relied upon.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Suzanne Dino Barrett

Conferees:

Meredith Petravick 

Patricia Engle 